

Attn Court Clerk:

Here is a copy of discovery given to the defendant.

Sincerely,

David Murphy

Case# 1:10-CV-00645-LEK-DRH

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED  
OCT 15 2010  
LAWRENCE K. BAERMAN, CLERK  
ALBANY

## **I. DISCOVERY**

1. In order that Plaintiff may access the accuracy of information now in possession of Defendant and to secure more complete evidence that may dispel or explain Plaintiff's concerns, please provide complete discovery of all the information herein requested in accordance with the following instructions:
  1. Please, do not attempt to contact Plaintiff by phone or by any other informal method.
  2. Please make all communications in an accepted official and verifiable manner, either:
    - a. by letter;
    - b. by email; or
    - c. by fax.
  2. For each record kept on computer or in any other electronic file or format, please provide a paper copy of all information in each field or record in each computer system, program or database used by lender that contains any information on this account number or borrower's name.
  3. As such, please provide, at the address above, copies of the documents requested below, with a verified testament to the veracity and correctness of all information provided, as soon as possible.

## **II. PRODUCTION OF DOCUMENTS**

4. The following documents are required to be produced by lender to borrower under various consumer protection laws, but are either missing from borrower's records or incomplete. For each item requested, please provide a complete, legible copy.

### ***A. NOTICES REQUIRED***

5. A number of notices are required by various consumer protection laws. Please provide a copy of each notice the lender is required to provide to the borrower either signed or initialed by borrower and dated so to show that the notice was timely provided.
6. Please provide, for inspection, each and every original promissory note as contemplated by The Uniform Commercial Code 3-501;
7. Plaintiff has made calculations based on loan documents in the possession of Plaintiff. In

order to insure that said calculations are accurate, please provide correct copies of the following:

1. loan application (HUD 1003);
2. all Good Faith Estimates prepared for borrower;
3. the Truth In Lending Statement;
4. settlement statement (HUD1)
5. all notices required to be presented to borrower, showing either the signature or initials and also the date of said signature or initial as proof said disclosure was timely presented to borrower.

***B. FINANCE CHARGES***

8. For each fee listed in the settlement statement which was provided to Plaintiff at closing on the property at issue, please provide;
  1. a complete billing from each vendor who provided the above listed services;
  2. the complete contact information for each vendor who provided a billed service;
  3. clear description as to the specific service preformed;
  4. a showing that said service was necessary;
  5. a showing that the cost of said service is reasonable;
  6. a showing of why said service is not a regular cost of doing business that should rightly be included in the finance charge.
9. The above charges are, hereby, disputed and unreasonable until such time as said charges have been demonstrated to be reasonable, necessary, and in accordance with the limitations and restrictions included in any and all laws, rules, and regulations intended to protect the consumer.

***C. STANDING TO ENFORCE CONTRACT***

10. Requestor, in order to establish that the current servicer of the above account has standing to raise any issue concerning collection under the above referenced account, requestor demands a complete, un-redacted, copy of the following:
  - a. The security instrument which contains
    - a. the date and signature of borrower;

- b. the promise to pay the amount claimed in the account,
  - c. all direct endorsements added to said instrument after creation by borrower, and
  - d. any allonges which may be associated with said security instrument.
- b. Please identify the master record holder of this account file.
- c. Please identify, by name and current contact information, each and every person or entity who has received a financial benefit from the monies paid by borrower related to the instant account, to include, but not limited to the following:
  - i. every individual, entity, party, bank, trust organization or servicer that has been assigned the mortgage servicing rights to this account
  - ii. every person or entity who is currently receiving or who has ever received a beneficial interest from the payments of principal and interest on this loan.
  - iii. all investors [as defined in the lender industry] who have participated in any mortgage-backed security, collateral mortgage obligation, or other mortgage security instrument that this mortgage account has ever been a part of from the inception of this mortgage to the present date;
  - iv. the parties and their addresses to all sales contracts, servicing agreements, assignments, allonges, transfers, indemnification agreements, recourse agreements and any agreement related to this account from its inception to the current date written above;
  - v. provide contact information for each person or entity reference by the preceding entry.
- d. Please provide copies of all sales contracts, servicing agreements, assignments, allonges, transfers, indemnification agreements, recourse agreements and any agreement related to this account from its inception to the current date written above.
- e. If part of a mortgage pool, please provide the principal balance used by lender to determine payment for this individual mortgage loan.
- f. If part of a mortgage pool, please provide the percentage paid by lender of the principal balance above used to determine purchase of this individual mortgage loan.
- g. Please identify the person or entity to which the current real party in interest issued a check or payment to for the purchase of this mortgage loan?
- h. Please provide copies of the front and back of the canceled check used to purchase the security from any real party in interest by the entity now standing as the current real party in interest.

- i. If the entity now purporting to hold a claim against the property is an agent for the real party in interest, please provide the name and contact information for the real party in interest.
- j. Please provide evidence that the department of Housing and Urban Development (HUD) assigned or transferred foreclosure rights to lender as required by 12 USC 3754?
- k. Please identify, to include contact information for all persons with authority to act in the place of the real party in interest concerning the account.
- l. For each of the above, please provide contact information for every person whose signature appears on any document requested.

***D. TRUSTEE***

11. In as much as a trustee has been appointed to act as a neutral party in matters concerning the instant contractual arrangement, in order that requestor may determine the status of said trustee, please provide the following:
  - a. A copy of any documentation evidencing any trust relationship regarding the Mortgage/Deed of Trust and any Note in this matter.
  - b. Please send to the requester a copy of all document(s) establishing any Trustee of record for the Mortgage/Deed of Trust and any Note.
  - c. Please advise borrower of any relationship between trustee and lender.
  - d. If any trustee is an attorney, please include contact information and evidence of good standing with the bar association of the every state in which the attorney is authorized to practice law, and/or do business.
  - e. Please send to the requester a copy of document(s) establishing the date of any appointment of Trustee Mortgage/Deed of Trust and any Note. Please also include assignments or transfers or nominees of any substitute trustee(s).
  - f. Please send to the requester a copy of document(s) establishing any Grantor for this Mortgage/Deed of Trust and any Note.
  - g. Please send to the requester a copy of document(s) establishing any Grantee for this Mortgage/Deed of Trust and any Note.
  - h. Please send to the requester a copy of document(s) establishing any Beneficiary for this Mortgage/Deed of Trust and any Note.
  - i. Please send to the requester any documentation evidencing the Mortgage or Deed of trust is not a constructive trust or any other form of trust.

***E. COMPLETE ACCOUNTING***

12. In order that requestor may accurately assess the propriety of all funds demanded by creditor, please provide requestor with the following:

- a. In order that requestor may narrow the scope of any subsequent requests, for records collected, assembled, and/or maintained by lender concerning the instant account, please provide a complete listing of said records maintained by any entity over which lender may have records, relevant to the instant account, in its actual or constructive control, to include (but not limited to) the following:
  - a. the method of storage for each record;
  - b. the name or designation of each record kept;
  - c. the scope and substantive content of each record kept;
  - d. the most efficient method of making each record available for inspection if other than printed format.
- b. As it relates to the account, please provide all data, information, notations, text, figures and information contained in lender mortgage servicing and accounting computer systems including, but not limited to Alltel or Fidelity CPRequestor system, or any other similar mortgage servicing software used by lender, any servicers, or sub-servicers of this mortgage account from the inception of this account to the date written above.
- c. Descriptions and legends of all Codes used in lender mortgage servicing and accounting system.
- d. All assignments, transfers, allonges, or other documents evidencing a transfer, sale or assignment of this mortgage, deed of trust, monetary instrument or other document that secures payment by borrower to this obligation in this account from the inception of this account to the present date including, but not limited to, any such assignments on MERS.
- e. For all transfers, allonges, or other documents evidencing a transfer or sale of this mortgage, please provide the name and contact information (to include a current mailing address) for each person who signed any document authorizing said transfer or sale.
- f. All records, electronic or otherwise, of assignments of this mortgage, monetary instrument, or servicing rights to this mortgage including any such assignments on MERS.
- g. All deeds in lieu, modifications to this mortgage, monetary instruments or deed(s) of trust from the inception of this account to the present date.
- h. The front and back of each and every security instrument, to include but not limited to, canceled check, money order, draft, debit or credit notice issued to any servicers of this

account for payment of any monthly payment, other payment, escrow charge, fee or expense on this account.

- i. All escrow analyses conducted by lender or any regulatory agency, on this account from the inception of this account until the date of this letter;
  - j. The front and back of each and every canceled check, draft or debit notice issued for payment of closing costs, fees and expenses listed on disclosure statement(s) including, but not limited to, appraisal fees, inspection fees, title searches, title insurance fees, credit life insurance premiums, hazard insurance premiums, commissions, attorney fees, points, broker fees, etc.
  - k. Front and back copies of all payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made on the instant account.
  - l. All letters, statements and documents sent to by agents, attorneys or representatives of creditor;
  - m. All letters, statements and documents contained in this account file or imaged by lender and any servicers or sub-servicers of this mortgage from the inception of this account to present date.
  - n. All electronic transfers, assignments, sales of the note/asset, mortgage, deed of trust or other security instrument.
  - o. Please provide any IRS 1099a forms filed relating to the account.
13. In the event that lender considers any of the above requests to be burdensome or overbroad, please provide explanation and suggestions that will allow borrower to narrow the scope of the instant request so as to avoid unnecessary inconvenience in compliance with the disclosure provisions of all relevant disclosure requirements.

#### ***F. PROPERTY INSPECTIONS***

1. For purposes of this section property inspection and inspection fee refer to any inspection of property by any source and any related fee or expense charged, assessed or collected for such inspection, please provide the following:
2. Please detail and list in writing each separate inspection fee assessed to this account and for which corresponding payment period or month such fee was assessed from the inception of this account to present date.
3. Please identify in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement requestor signed that authorized the assessment or collection of property inspection fees?

4. Please forward to me copies of all property inspections made on the instant property in this mortgage account file.
5. Please disclose any fee charged or assessed for property inspections which have been placed into escrow for the instant account.

***G. ACCOUNTING & SERVICING SYSTEMS***

14. In order that requester may determine that the lender has implemented and maintained an accounting system sufficient to insure against mistake or error, please provide the following:
  - a. The standing policy of the lender concerning the practices and procedures to be used by its brokers, loan officers, and other employees to endure good faith and fair dealings with the public.
  - b. A list of all persons terminated from the lender's employment as a result of work related misconduct, for a period beginning on the date the instant account was created and ending on the date of this request. (In the interest of protecting the privacy of the individuals involved, you may identify the individuals by first name and middle initial only. )
  - c. A complete explanation of the audit procedures in place to insure against violations of standing law and company policies.
  - d. All account servicing records, payment payoffs, payoff calculations, ARM audits, interest rate adjustments, payment records, transaction histories, account histories, accounting records, ledgers, and documents that relate to the accounting of this account from the inception of this account until present date?
  - e. Please identify each account, accounting, and servicing system used by lender and any sub-servicers or previous servicers from the inception of this account to the present date so that this experts can decipher the data provided.
  - f. For each account, accounting, and servicing system identified by lender and any sub-servicers or previous servicers from the inception of this account to the present date, please provide the name and address of the company or party that designed and sold the system;
  - g. For each account, accounting, and servicing system used by lender and any sub-servicers or previous servicers from the inception of this account to the present date, please provide the complete transaction code list for each system so that I, and others can adequately



audit this account.

***H. ESCROW***

15. As escrow accounts, historically, have been a fertile field for fraud, please provide all the following concerning any and all escrow accounts related to the instant account:
- a. Complete escrow instructions;
  - b. Please stipulate the manner in which the amount required to be kept in escrow is calculated;
  - c. A complete, plain language explanation of each disbursement to include:
    - i. to whom the disbursement was made;
    - ii. the date of the disbursement;
    - iii. the reason for said disbursement.

***I. SUSPENSE/UNAPPLIED ACCOUNTS***

16. For purposes of this section, please treat the term suspense account and unapplied account as one in the same.
- a. Please list any suspense or unapplied account transactions on this account from the inception of this account until present date.
  - b. Please explain the reason for each and every suspense transaction that occurred on this account.

***J. FORCED-PLACED INSURANCE***

17. For each and every forced-placed insurance policy placed on the instant property, please provide the following:
- a. the date of each policy ordered or placed on the property that is the secured interest for this mortgage, deed or note;
  - b. the price of each policy;
  - c. the agent for each policy;
  - d. why each policy was placed on the instant property;
  - e. lender policy on forced-placed insurance;
  - f. records of any forced-placed insurance fees assessed to this mortgage or escrow account;

- g. for each separate fee, specifically what clause, paragraph and sentence in the note, mortgage or deed of trust or any agreement requestor has executed allows lender to assess, charge or collect such forced-placed insurance fee;
- h. the nature of any relationship with the agent or agency that placed any policies on the instant property;
- i. the nature of any relationship between the carrier that issued any policies on the instant property and the lender;
- j. for any policy where the beneficiary is not the borrower, please stipulate the authority to force place said policy.
- k. the name of the agency or carrier lender used to place a forced-placed insurance policy on the instant property to include a description of any service provided to lender, computer system, discount on policies, commissions, rebates or any form of consideration;
- l. Any blanket insurance policy to protect lender properties when customer policies have expired;
- m. Copies of all forced-placed insurance policies that have been ordered on the instant property.

### III. ADMISSIONS

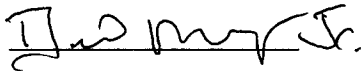
18. For the purposes of judicial economy, in order to avoid unnecessary litigation, pleas admit or deny the following: *(in the event defendant is compelled to of any of the following, please avoid the boiler plate objections and fully explain the reason for the denial or objection so that the request can be re-cast in a more acceptable manner.)*
19. All fees claimed or collected in connection with the above referenced contract establishing the alleged instant debt:
- a. were fair, reasonable, and in keeping with all laws, rules and regulations relevant to same;  
Admitted \_\_\_\_\_ Denied \_\_\_\_\_
  - b. are accurate in accordance with the terms of said contract and the law as it existed at the time the note was signed;  
Admitted \_\_\_\_\_ Denied \_\_\_\_\_
18. All fees assessed:
- a. are fees for actual service performed;

- i. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
  - b. were legitimate and
    - i. no “junk” fees were included in the fees charged to the borrower or seller;
      - 1. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
    - ii. No fees were paid for referrals, or up-selling, to any otherwise person or entity not authorized to receive such payments;
      - 1. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
19. All notifications and explanations required by law were properly and timely made to borrower;
- a. Affirmed \_\_\_\_\_
20. that the appraisal used by the lender is a true and accurate appraisal and has not been manipulated in any way;
- a. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
21. No improper practices were used to manipulate the accounting in order to falsely present the borrower as qualified for a loan;
- a. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
22. All monies collected from borrower have been properly and timely credited to borrower;
- a. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
23. All persons with a fiduciary duty to borrower have acted with the highest of integrity and in good faith and fair dealings with borrower.
- a. Admitted \_\_\_\_\_ Denied \_\_\_\_\_
24. Borrower was not subjected to any improper practices or pressures by either the broker or and representative of the lender that would violate any of the consumer protection laws.
- a. Admitted \_\_\_\_\_ Denied \_\_\_\_\_

#### **IV. ALL INQUIRIES IN WRITING**

25. Please provide the above in a timely manner as requestor considers the need for the above to be necessary to a fair adjudication of the above cause. In the event any deletions or redactions to any records have been made, please provide the scope and substantive content of the records omitted from this request and the reason for the withholding of the requested information.

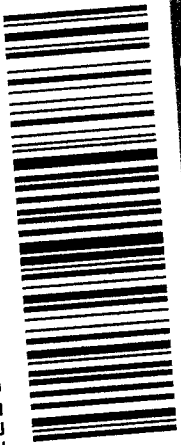
**Respectfully,**

A handwritten signature in black ink, appearing to read "David Murphy". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

**David Murphy**

David Mospur  
51 Lincoln Ave  
Gloves NY 12047

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL™**



7010 0780 0000 7720 1022



1000



12207

U.S. POSTAGE  
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U.S. DISTRICT COURT  
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OCT 15 2010

LAWRENCE K. BAERMAN, CLERK  
ALBANY

Atttn Court Clerk  
Albany U.S. Courthouse & Federal Bank  
445 Broadway - Rm 345  
Albany NY 12207-2936

1220782936

